

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling  
Units and Other Real Estate Developments

MB Docket No. 07-51

Reply to the "COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL"

## **I. LACK OF REGULATION BY LOCAL FRANCHISING AUTHORITIES OVER SATELLITE PROVIDERS IN STATES THAT DO NOT REQUIRE LOCAL FRANCHISES FOR SATELLITE PROVIDERS**

Rate Counsel opposes the proposed federal rulemaking largely because rate counsel feels that adequate regulation is already provided by local franchising authorities. However, in California, local franchising authorities regulate (and tax) only service delivered to a building via wires or fiber optics, and do not regulate (or tax) those delivered via satellite directly to a receiver located on or in an MDU. Exclusive contracts between satellite providers and MDU owners in California not only prevent tenants from selecting a service provider, but also prevent tenants from receiving (from any provider) service subject to regulation by local franchising authorities. The "largest satellite video provider to the multi-housing industry in the Western United States" is now Consolidated Smart Systems ("Multiband Completes Sale of Certain California-based Video Subscribers To Consolidated Smart Systems", Business Wire, March 6, 2007), a company which has successfully avoided regulation by local franchising authorities by only offering only satellite service, and primarily to California MDU properties (it may also have a few customers in Arizona).

Rate Counsel also argues that the FCC does not have authority over exclusive contracts because Title VI gives authority over exclusive contracts with franchised service providers to local franchising authorities. However, local franchising authorities have jurisdiction only over those exclusive contracts to which franchised providers are a party. The FCC clearly retains authority to regulate service providers who do not hold local franchises (such as Consolidated Smart Systems).

As Rate Counsel seems to imply, it is essential for customers to be able to obtain service subject to regulation by local franchising authorities. For this reason and others, the FCC should prohibit contracts that exclude all service providers willing to be regulated by local franchising authorities and allow customers to obtain service only from companies, such as Consolidated Smart Systems, that refuse to offer service subject to regulation by local franchising authorities.

## **II. REGULATION OF EXCLUSIVE CONTRACTS IN NEW JERSEY**

Rate Counsel also concedes that New Jersey has prohibited exclusive contracts since 1983. I applaud New Jersey for doing this. However, I fail to understand why Rate Counsel feels that, if one state protects its citizens' rights, then the federal government need not offer the same protections to residents of other states. Although many states voluntarily abolished slavery and allowed women to vote, prior to the Thirteenth and Twentieth Amendments, respectively, these Amendments were not redundant. Instead, some rights are so important that they must be protected everywhere, even when powerful financial interests prevent some governments from doing so in certain places. Chief among these rights is the right to select a supplier whose service is acceptable to the customer, and not merely the party who has obtained both an exclusive contract to which the customer never consented and the political connections to prevent the passage of legislation such as New Jersey has enacted. Over two hundred years ago, when the British government failed in its responsibility to abrogate an exclusive contract held by a supplier of tea to the colonies in North America, the colonists revolted, not because of the

cost of the tea, but because, unlike Rate Counsel, they recognized that exclusive contracts violate the right to be free from unreasonable interference in commerce with the excluded provider, whether of tea or of television service. The federal government that these brave souls founded must continue to recognize the fundamental nature of the right for which so many of them died, or their sacrifice will have been in vain.

In modern times, New Jersey's 24-year experiment shows that prohibiting exclusive contracts does not result in the sky falling or any of the other dire consequences that some other commenting parties suggest that it would. In particular, filed comments stating that new housing developments are unable to receive any service unless they can offer exclusive contracts seem not be to consistent with the widespread availability of television service in New Jersey to this day. (Of the three major cases of unavailability of television service to New Jersey between 1983 and the present, two affected only over-the-air broadcasting, and were caused by terrorist attacks on the World Trade Center, where a transmitting tower for several stations serving parts of New Jersey and New York was located, and one was caused by a widespread power failure affecting most of the region, including the televisions in it. All three were temporary, and none would have been prevented by exclusive contracts in New Jersey.)

While the New Jersey law was an important first step, it addressed only cable services, and not satellite television or fiber optic services, so it may no longer adequately protect New Jersey residents. In any case, it does not protect residents of other states.

In conclusion, the FCC should extend the prohibition of exclusive contracts nationwide, so that residents of California, and other states, can enjoy the protections that New Jersey residents have received for the last 24 years.